IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5140 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HARESHBHAI NARANBHAI JUNGI

Versus

DISTRICT MAGISTRATE

Appearance:

MR YOGESH S LAKHANI for Petitioner

MR SJ DAVE, AGP for Respondent Nos.1, 2 & 3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 17/07/2000

ORAL JUDGEMENT

By means of filing this petition, the petitioner has challenged the validity and legality of the order of detention dated 19-6-1998 passed by the District Magistrate, Junagadh declaring him as a dangerous person.

2. It is a settled principle of law that in order to

bring a person within the expression "dangerous person" as defined in clause (c) of section 2 of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short `the Act of 1985'), there should be positive materials to indicate that such person is habitual of committing or attempting to commit or abetting the commission of offences which are punishable under Chapter XVI or XVII of Chapter V of the Arms Act and that single or isolated act falling under the said Chapters cannot be characterised as a habitual acts as envisaged in section 2(c) of the PASA Act. Further, besides a person being a dangerous person, his activities should also fall within the ambit of expression `public order'. A distinction has to be drawn between the `law and order' and `maintenance of public order'. A reference may be made of M.J.Shaikh V. M.M. Mehta, Commissioner of Police & Ors., reported in 1995 (2) GLR 1268.

3. I have heard learned advocate for the petitioner and also perused the material on record. Learned advocate for the petitioner has argued on various points. At the end of arguments, he has restricted his argument only on one point that the detenu has not been supplied with the translated version of the papers annexed with the grounds of detention at page Nos.135, 137, 143 and 145 which are in English language. He has taken specific contention in his grounds being ground (k) in the petition at page 8 that petitioner has requested the authority vide representation that since he does not know English, translated copies of the page Nos.135, 137, 143 and 145 of the grounds of detention be supplied, still the authority has not supplied the same. Learned APP for the State, Mr.S.J.Dave has fairly admitted the same. Though above facts has been averred by the petitioner in his ground No.4(k), same has not been controverted by the authority.

4. In view of the facts and circumstances of the case, I am of the opinion that the detaining authority failed to supply translated copies of the aforesaid pages to the detenu, though requested by representation, for making an effective representation against the order of detention. Therefore, the right of the petitioner for making an effective representation under Article 22(5) of the Constitution has been infringed. Since the petitioner succeeds only on this point learned advocate for the petitioner does not press any other points.

5. In view of the above, the petition is allowed. The impugned order of detention dated 19-6-1998 passed against the detenu is hereby quashed and set aside. The

detenu-Hareshbhai Naranbhai Jungi is ordered to be set at liberty forthwith, if not required to be detained in any other case. Rule is made absolute accordingly with no order as to costs.

(R.P.DHOLAKIA,J.)

RADHAN/